UNITED
NATIONS

TD

United Nations Conference
on Trade and Development

Distr.
GENERAL

TD/B/RBP/79
20 August 1991

ENGLISH
Original: ENGLISH/FRENCH/
SPANISH

TRADE AND DEVELOPMENT BOARD
Intergovernmental Group of Experts on
Restrictive Business Practices
Tenth session
Geneva, 21 October 1991
Item 3 of the provisional agenda

REVIEW OF THE OPERATION OF AND EXPERIENCE ARISING FROM THE APPLICATION AND IMPLEMENTATION OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

Replies by States and regional groupings on steps taken to meet their commitment to the Set of Principles and Rules

Note by the UNCTAD secretariat

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GE.91-51512/3709B

I. INTRODUCTION

1. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, in section G, provides that "States which have accepted the Set of Principles and Rules should take appropriate steps at the national or regional levels to meet their commitment to the Set of Principles and Rules". Further, in section F, the Set provides for "communication annually to the Secretary-General of UNCTAD of appropriate information on steps taken by States and regional groupings to meet their commitment to the Set of Principles and Rules, and information on the adoption, development and application of legislation, regulations and policies concerning restrictive business practices".

2. As in previous years, the Secretary-General of UNCTAD, in a note dated 31 May 1991 (TD/420/8(6)), requested States and regional groupings to provide the above-mentioned information not later than 5 July 1991. In the note, the Secretary-General reiterated the secretariat's statement made during previous sessions of the Group that this information should not consist only of general activity reports of RBP control authorities. Rather, it should concentrate on developments directly relevant to the implementation and application of the Set by member States, for example: (i) the introduction of new RBP legislation to bring it into line with the Set; (ii) the revision and/or amendment of existing RBP legislation to bring it into line with the Set; (iii) the translation and dissemination of the Set and the organizing of contacts with business circles to ensure its effective application; (iv) the exchange of information with foreign RBP control authorities to strengthen RBP controls; (v) notifications of, and action taken against, RBPs which adversely affect foreign countries and which originate in enterprises under the notifying country's jurisdiction; (vi) consultations between countries on matters related to the control of RBPs, with a view to reaching understandings; (vii) the organization of, participation in, or provision of financial and other resources for technical assistance and advisory and training programmes on restrictive business practices, particularly for developing countries.

3. The information received is therefore reproduced and submitted to the tenth session of the Intergovernmental Group of Experts on Restrictive Business Practices for its annual review of the operation of and experience arising from the application and implementation of the Set. The present note contains replies received, as of 9 July 1991, from the following States: Belgium, China, Germany, Japan, Malawi, Norway, Uganda, Spain, Sweden, Switzerland, Thailand, the United Kingdom and Venezuela.

II. REPLIES FROM STATES

BELGIUM

4. Concerning Belgian legislation, the Government stated that in 1990 no amendments had been made to the Act of 27 May 1960 concerning Protection against the Abuse of Economic Power.

5. The Bill on Protection of Economic Competition, whose main features were outlined in the previous report, was agreed to in principle on 9 February 1990 by the Council of Ministers. It was subsequently submitted to the Council of State for consideration. The Bill has been modified in order to take into account the comments made by the latter body in its opinion of 9 April 1990. That revised version was submitted in its turn to the Council of Ministers, which approved it at its meeting of 27 July 1990. The Bill was then tabled for approval by the House of Representatives, where it was initially considered in a smaller Committee whose task is to study, prior to the vote by the House in plenary session, proposed legal provisions having economic implications.

Report on activities relating to the control of restrictive business practices

6. In 1990, the Economic Disputes Council considered the file on the bakery industry, which had been submitted to it at the end of 1989 by the Commissioner-Special Rapporteur who was the judge in charge of the inquiry. The judge took the view that there had been, as was stated at greater length in the previous report, an abuse of economic power within the meaning of the aforementioned Act of 27 May 1960.

7. The issue had first arisen through a ministerial request for an investigation based on information to the effect that the Brussels regional bakery trade association was exerting pressure on its members to align their retail bread prices with the maximum official prices and was using various methods of intimidation against those who were selling below those prices.

8. Based on the results of the inquiry directed by the Commissioner-Rapporteur and on his conclusions, the Economic Disputes Council made the following determination concerning the market in question, the dominant position and the practices complained of:

(a) The market in question

The Council was of the opinion that the market concerned was the market for bread in general (the different types of bread were thus not taken into consideration). It also took the view that, since the consumer usually buys this product in the vicinity of his home, the market, seen from a geographical standpoint, should be confined to a small scale, and that the market for the Brussels urban area might certainly constitute a distinct market.

(b) Dominant position

In the report on the inquiry the Council noted that the Brussels Bakery Federation comprised 85 per cent of owner/bakers, even if, as the Federation emphasized, they supplied only 50 per cent of the market. The Council concluded that this did indeed represent a dominant position, a position also deriving from the nature of its activities, which were those of a trade association linked to the activities of a central purchasing unit.

(c) Practices complained of

In the Council's view, various items of information in the report on the inquiry tended to prove that the Federation had indeed exercised "unlawful pressures with a view to maintaining, in the Brussels region, the maximum prices agreed with the Minister as the actual retail sales prices".

9. However, having noted that the Brussels Bakery and Confectionery Owners Association had not engaged in these practices for the previous five years, and that "it may be expected to continue to refrain from them in the future", the Council ruled that the Association was not abusing its economic power.

10. The decision in this case is binding upon the Minister pursuant to article 13 (3) of the Act of 27 May 1960 which provides that, when the Council finds that there has not been an abuse of a dominant position, the case is closed without further action.

Article on policy regarding competition

11. In an article entitled "Kroniek Belgisch Economisch Recht (1 January 1989 - 31 December 1989)", Mr. H. Swennen and Mr. I. Verougstraete devote a section to policy regarding competition. They provide a brief commentary on the new Bill on Protection of Competition mentioned in paragraph 5 of this report. They also give a short account of the most noteworthy decisions taken with regard to restrictive business practices both by the Economic Disputes Council and by the courts and tribunals; the latter indirectly penalize such practices on the basis of other legal provisions or apply the law of the European Communities concerning competition.

CHINA

12. China provided the UNCTAD secretariat with the Copyright Law adopted at the fifteenth session of the Standing Committee of the Seventh National People's Congress on 7 September 1990; Regulations on Administration of Technology Import Contracts promulgated by the State Council on 24 May 1985; and detailed rules for the implementation of the regulations on administration approved by the State Council on 30 December 1987 and promulgated by the Ministry of Foreign Economic Relations and Trade on 26 January 1988.

GERMANY

13. The Government, with reference to section F, paragraph 3 of the Set, submitted the following report for 1990:

I. Regarding the economic and competition policy situation

(a) Advance of market economy system

14. The collapse of the regimes in the former German Democratic Republic (GDR) and in eastern Europe offers the chance of political and economic renewal: whereas the Helsinki Final Act, the concluding document of the Conference on Security and Cooperation in Europe (CSCE), committed all participating Governments to adopt multi-party democracy as their form of government, in the economic field the market economy system will play a central role in building the Europe of the future.

15. Unfortunately, there is no model nor any past experience to draw on for transforming the former centrally administered economies into market economies. But one thing is certain: a high price has been paid for the many decades of serious violations of economic principles. Among others, they comprised misallocation of scarce resources, production at excessive cost, neglect of an infrastructure indispensable for economic development, failure to protect the environment and - last but not least - the lack of incentives for motivating employees and enhancing their performance.

16. As far as Germany is concerned, the sudden change of economic system has resulted in a deep structural crisis in the five new Länder, the former GDR. Production of a large number of goods which are no longer competitive under conditions of an open market has to be discontinued. As far as the former East German enterprises offer a chance of survival, they need bridging aid for coping with structural adjustment. The time required for overcoming this structural crisis will largely depend on how quickly the former State-owned enterprises can be privatized and competitive structures of a good mix of companies of every size be set up under market economy conditions in the five new Länder.

(b) Growing internationalization

17. The internationalization of markets which has been greatly increasing in the past few years and the ever more globally oriented business strategies of large corporate groups are accompanied by the accelerating pace of technological developments: both the time-span between innovation and imitation and product life cycles are becoming shorter and shorter. With a view to ensuring that they will remain competitive in future, enterprises are forced to boost their research and development expenditures today. The competitive pressure in many markets has increased accordingly.

18. Enterprises operating on international markets respond to the enhanced intensity of competition not only by expanding through external growth. Rather, recent examples increasingly show that companies choose the strategy of building transnational corporate structures to expand their activities in the international field. In this context, the so-called strategic alliances

are of particular importance. This new economic policy buzz-word is used to describe forms of cooperation and mutual harmonization of interests between legally independent enterprises that are major players in certain areas in a certain region of the world. The reason for this kind of global cooperation is that, in order to be present in as many fields of business as possible, the corporate groups have to seek international partners with complimentary activities and skills. However, if there is such a network of agreements - frequently backed by cross-shareholdings below the merger control threshold - among several enterprises operating on a global scale and holding leading positions in a certain industrial sector, the risk arises that competition is weakened. Since under competition policy aspects "strategic alliances" entail the danger of private-sector market orders being set up, this requires close attention of the competition authorities.

II. Competition law aspects of the German unification process

19. Competition policy and competition law play an important role in the restructuring of the economy of the former GDR and its integration into the economy of the Federal Republic of Germany. On the one hand, it has been clear from the beginning that only the influx of Western capital and know-how, i.e. the acquisition of shareholdings by Western firms, can help the economy of the new German Länder become competitive. On the other hand, it is necessary to prevent the former State monopolies being replaced by private monopolies, or the existing monopolistic market structure continuing to exist in a different form, and mergers and acquisitions in such areas having anti-competitive effects in the territory of the former Federal Republic of Germany or in the new all-German market.

20. In order to preclude West German market dominators from gaining the upper hand in the new Länder, an Office for the Protection of Competition was founded in the GDR in close cooperation between the ministries concerned in both German States even before the all-German Monetary, Economic and Social Union took effect. In addition West German competition law was essentially adopted on 1 July 1990. With German unification on 3 October 1990, the Office for the Protection of Competition ceased to exist and the Federal Cartel Office (FCO) became responsible for enforcing competition law in all the 16 Länder of the Federal Republic of Germany. However, in the 155 days of its existence, the Office for the Protection of Competition did a good job of initiating competitive structures in the former GDR. To give but one example: the Office examined 149 notified mergers. While none of them was prohibited, a number of merger proposals were substantially restructured to meet the Office's competitive concerns. In this context, many former State monopolies were found to be by no means market-dominating and in most cases not even competitive under free-market conditions. Furthermore, in its competitive analysis the East German Office could, in nearly all cases, assume that markets would open up and administrative barriers to market entry be removed as a result of unification.

21. The overwhelming part of mergers with former GDR firms that were subsequently examined by the FCO did not raise any competition problems, either. In analysing those cases, the Office often found that the competitive potential that was obtained through a participation was unlikely to noticeably strengthen the market position of the acquiring firm. Rather, mergers and

cooperation with Western partners often proved to be the only, or at least the fastest and most efficient way of turning the East German companies into competitive businesses. Most mergers and acquisitions have therefore had favourable rather than unfavourable effects. Among the approximately 300 proposed mergers that were examined by the FCO in the reporting period there was not a single case where a West German firm's market position was strengthened by the acquisition of a holding in a former GDR firm to such an extent that the acquiring firm became market-dominating. And even where the acquiring firms already possessed market-dominating positions in the old Länder, the conditions of prohibition were not met because the market positions were not further strengthened. However, in a number of cases the FCO raised competitive concerns which were subsequently removed in negotiations with the firms concerned.

22. The FCO was particularly concerned about merger proposals where all or the leading firms in an industry intended to acquire a joint shareholding in the corresponding GDR kombinate. Had such proposals been realized, not only would competition in the new Länder have been virtually excluded but competition in the old Länder would also have been endangered as a result of spillover effects. The FCO made it clear from the outset that it would not accept such solutions. In such cases, the kombinate were cut up and the various divisions sold to different buyers, which often led to an overall improvement of the competitive structure in the 16 Länder.

III. Privatization and deregulation

23. In 1983 after first steps in the 1950s and 1960s the Federal Government started a new effort to sell most of the rest of its direct and indirect participations in industrial firms. The sale of shares in the four industrial groups Veba, VIAG, VW and Salzgitter alone yielded about DM 6 billion. In the period under review, the Government practically concluded its privatization programme of 1983 with the selling of Prakla-Seismos. The Government's declared aim of "reducing the State's activities to its main tasks" has remained unchanged. In November 1990, the Cabinet decided on a new, even more ambitious effort to further reduce the participation held by the State. A privatization list which was set up by the coalition parties contains all airport-participations, the national carrier Deutsche Lufthansa as well as several companies in the transport and banking sector. Medium-term fiscal planning until 1993 already includes proceeds from transfers to private ownership amounting to approximately DM 3 billion.

24. By the way, a considerable amount of public property that is eligible for privatization comes under the jurisdiction of the Länder and local communities which so far have been rather reluctant to sell their industrial holdings. As the FRG is organized as a federation, the Federal Government has only little influence in this respect.

25. In order to relieve business of unreasonable bureacratic regulation, the Federal Government took a number of further deregulation measures parallel to its privatization programme. As a rule, regulation restricts competition by setting up barriers to market entry, leading to compulsory price cartels or making the suppliers' decisions on quality depend on official approval.

26. The measures taken by the Federal Government in the period under review benefit mainly the transnational supply of services (primarily in the professions and in the insurance industry) and thereby comply with the relevant EC directives. In addition the recommendations contained in the two reports of the German "Commission of Experts on the Removal of Uncompetitive Regulations" will be discussed by a working group of the governing parties which will present its recommendations to the Federal Government for further deregulation measures in autumn 1991.

IV. New restrictive business practices legislation

27. On 1 January 1990, the Fifth Act to Amend the Act against Restraints of Competition (ARC) came into effect. The Amendment has two main objectives: firstly, the instruments of structural and behaviour control are to be improved especially with regard to developments in the distributive trades; secondly, it aims to deregulate the areas of transport, banking and insurance as well as public utilities, areas which have so far been partially exempt from competition law. In the FCO's enforcement practice, the new provisions have not yet gained much importance.

(For details of the Amendment see our report for 1988 and the English version of the amended Act against Restraints of Competition.)

V. Control of restrictive business practices

28. Unlike 1989, when the FCO imposed administrative fines totalling approximately DM 300 million (equivalent, e.g., to $US 175 million) for violations of the ARC (see paras. 12 and 13 of our 1989 report), all of which have become unappealable since, no significant fines were levied in 1990. This is due to the fact that investigations in pending major proceedings could not be concluded in 1990. In any case, the FCO will continue to impose severe penalties for violations of German compeitition legislation.

29. In the spring of 1991, the FCO imposed fines totalling more than DM 40 million (equivalent, e.g., to $US 23 million) on leading German drug wholesalers for forbidden rebate agreements as well as on leading German tour operators and charter airlines for prohibited agreements on fuel surcharges. Both proceedings will be commented on in detail in our 1991 report. No further major proceedings dealing with violations of the cartel ban are pending at present.

30. If markets are open, i.e. if there are no market entry barriers and transport charges do not play any significant role, there is hardly any chance of market power being abused. The number of proceedings conducted by the FCO in the reporting period is therefore small.

31. One case among those few proceedings is worth mentioning though. In the autumn of 1990, the FCO issued a preliminary injunction against the leading German mineral oil companies requiring them to lower their petrol station prices regionally. According to the findings of the FCO, the companies had not reduced their consumer prices despite the clear decrease of crude oil and product prices on the world market. The Berlin Court of Appeals has reversed

the FCO decision, though, on the grounds that the mineral oil groups are neither market-dominating nor has it been proved that their alleged conduct was abusive.

32. Competition can be restrained or even excluded not only by cartel agreements or abuses of market power, but also through mergers. To protect competitive market structures the FCO formally prohibited seven corporate mergers (1989: 11; 1988: 5) in the period under report. Furthermore, more than ten proposed mergers were either abandoned by the enterprises involved in view of competitive concerns raised by the FCO or ultimately completed in a form that no longer posed competitive problems.

33. As in previous years, one merger prohibited by the FCO involved a foreign target company (Daimler-Benz + MAN/Enasa). This case again evidences that the FCO proceeds against all anti-competitive concentration tendencies which have effect in the Federal Republic of Germany, regardless of where they originate.

34. When announcing five of the seven decisions by which mergers were formally prohibited in the period under report, the FCO issued a written press release, the English versions of which are given below:

Acquisition of Pinneberger Tageblatt by Springer-Verlag prohibited 1/

35. The Federal Cartel Office (FCO) has prohibited both the 1986 acquisition of just under 25 per cent of the capital of A. Beig Druckerei und Verlag GmbH, of Pinneberg, by Axel Springer Verlag AG, of Hamburg, and Springer's proposed acquisition of a further 25 per cent, which was pre-notified in 1989. Beig publish two subscription dailies and a free sheet in the northern part of Germany, with a total circulation of 110,000 copies. In the same district, Axel Springer Verlag distribute the regional subscription daily "Hamburger Abendblatt" with a local edition, "Pinneberger Zeitung", as well as "Elmshorner Nachrichten" and a free sheet. As a result of the acquisition the firms involved have gained shares of over 80 per cent of the readers' market and over 50 per cent of the advertising market on the relevant market. If the proposed share increase was allowed to go ahead, these market dominating positions would be further strengthened. The FCO's decision has not yet become unappealable.

Merger between Springer Verlag and Volksblatt prohibited 2/

36. The Federal Cartel Office (FCO) has prohibited the publishing house Axel Springer Verlag AG, Hamburg, from acquiring nearly 25 per cent of the capital of the publishing and printing firm Lezinsky GmbH, Berlin. As well as operating a printing plant, Lezinsky GmbH publishes "Volksblatt", a Berlin subscription daily with a paid circulation of approximately 25,000 copies. After "Berliner Morgenpost" and "Tagesspiegel", "Volksblatt" is the third largest subscription daily in West Berlin. As a result of the acquisition and further agreements, Axel Springer Verlag would be able to exert a considerable influence on the competitive conduct of Lezinsky GmbH. The FCO takes the view that the acquisition would further increase Springer's paramount market position in West Berlin where it now has a share of over 50 per cent of the readers' market for regional subscription dailies, and of nearly 80 per cent of the advertising market. The decision has not yet become unappealable.

Joint bid of Daimler-Benz and MAN for ENASA prohibited 3/

37. The Federal Cartel Office (FCO) has prohibited the planned takeover by Daimler-Benz and MAN of ENASA. ENASA holds a majority stake in PEGASO which is Spain's only truck producer. The FCO held that the joint acquisition by the two German truck makers - by far the biggest producers in this field - of a stake in ENASA would create a permanent need for coordination and mutual consideration of the two German truck makers' business policies. In the FCO's view, this would significantly reduce the intensity of competition between Daimler-Benz and MAN not only in the Spanish market but also, and in particular, in the truck market of the Federal Republic of Germany. The prohibition decision has not yet become unappealable.

Merger of Asphalt mixing plants prohibited 4/

38. The Federal Cartel Office (FCO) has prohibited Bayerische Asphalt-Mischwerke GmbH & Co. Kommanditgesellschaft für Strassenbaustoffe (BAM) from acquiring all of the assets of H + W Asphalt-Mischwerke GmbH (H + W). BAM is a maker of bituminous mix in Bavaria. According to the FCO, the company is jointly controlled by the three largest German suppliers of bituminous mix, i.e. DEUTAG Asphalttechnik GmbH, Norddeutsche Mischwerke Dr. Joachim Schmidt GmbH & Co. KG, and Strassen- und Teerbaugesellschaft mbH. As a result of the merger, BAM's paramount market position on the Bavarian market for bituminous mix is further strengthened. The decision is not yet unappealable.

WAZ/Ostthüringer Nachrichten acquisition prohibited 5/

39. The Federal Cartel Office (FCO) has prohibited the proposed acquisition by Westdeutsche Allgemeine Zeitungsverlag GmbH & Co. Zeitschriften und Beteiligungs KG (WAZ), of Essen, of 40 per cent of the shares in Ostthüringer Verlag GmbH, of Gera (former GDR). With sales of about DM 1 billion, the WAZ group is by far the largest publisher of daily newspapers in North Rhine-Westphalia where it publishes the regional subscription dailies "Westdeutsche Allgemeine Zeitung", "Neue Ruhrzeitung", "Westfalenpost" and "Westfälische Rundschau". Ostthüringer Verlag GmbH publishes "Ostthüringer Nachrichten", which has a circulation of approximately 200,000, in the area of Gera. With a market share of some 70 per cent, it is by far the leading subscription daily in its circulation area. In the FCO's view, the market dominating position of "Ostthüringer Nachrichten", whose circulation area borders on the WAZ papers' area, would be further strengthened as a result of the merger. The decision has not yet become unappealable.

VI. Other activities

40. As in previous years, the Federal Republic of Germany carried out a number of measures required under F 6 of the Set.

41. The series of competition law seminars for experts from developing countries was continued in the summer of 1990 with a seminar for the five member countries of the Andean Pact. The Federal Republic of Germany will *pursue this kind of technical assistance in future. In 1991, a seminar for*

competition experts from the three Asian countries India, Sri Lanka and Thailand is to be held. As before, the seminar will be conducted in cooperation with UNCTAD and with a representative of UNCTAD participating.

42. As another measure in the area of technical assistance, the Federal Ministry of Economics and the FCO received a number of government officials and competition experts from several developing as well as industrialized countries in the period under review. The two-month stay of three government officials from the People's Republic of China at the FCO should be specially mentioned. Such training programmes will also take place at the FCO in 1991 and the following years.

43. On 18 and 19 June 1990, finally, the FCO held its Fifth International Cartel Conference Berlin 1990. Together with the heads of competition authorities from 27 nations (again including several representatives from developing and East European countries) the theme "International instruments to control restraints of competition after 1992" was discussed.

VII. Relevant studies

44. Several new studies on restrictive business practices appeared in the Federal Republic of Germany during the reporting period, but none of them are available in one of the official UNCTAD languages.

45. The Eighth Biennial Report by the Monopolies Commission, published in the summer of 1990 and entitled "Competition Policy Faced by New Challenges", is likely to be of special importance. Like the previous ones, this report includes the most comprehensive and up-to-date compilation of data relevant to competition, in particular concentration ratios, that is now available in the Federal Republic of Germany. An English summary of the main conclusions of the Eighth Biennial Report is enclosed.

JAPAN

46. The Government supplied the UNCTAD secretariat with the Fair Trade Commission's Antimonopoly Act Guidelines concerning Distribution Systems and Business Practices ("Guidelines"), based on the recommendation of the Advisory Group on Distribution Systems, Business Practices and Competition Policy (chaired by Professor Emeritus Ryuichiro Tachi, University of Tokyo), published in June 1990.

MALAWI

47. The Government stated that it did not have comprehensive legislation for the control of restrictive business practices.

NORWAY

48. The Government stated that the Norwegian Price Directorate followed up the Second United Nations Conference to Review the Set at Principles and Rules on Restrictive Business Practices in 1990 by a report on the Conference, together with relevant parts of the Set in the magazine "Pristidende" for

Norwegian trade and industry. Further, the Government stated that there had not been any major changes in the Norwegian competition legislation since the information provided by the Norwegian Price Directorate for the Handbook in October 1990, nor had the Directorate any further comments to make on the draft of a model law.

49. The Government of Norway also supplied the UNCTAD secretariat with the report of the Price Authorities covering the period 30 April 1990 - 1 May 1991. This report is reproduced below.

I. The legal basis

50. The activities of the Price Authorities are based on the Price Act of 26 June 1953.

51. The Price Act instructs the Price Authorities to supervise restrictive business arrangements and dominant enterprises. The Price Act therefore institutes an obligation on restrictive business associations, restrictive business agreements and dominant enterprises to report to the Price Directorate.

52. The Price Act further empowers the Price Authorities to intervene and amend or annul any restrictive business agreement which may have harmful effect on production or trade or is considered unreasonable or deterimental to the public interest.

53. The Price Authorities are responsible for instituting price regulations and the supervision of prices.

54. Two forms of regulation are prohibited. Associations and groups of suppliers are not allowed to set or suggest resale prices. Individual firms may issue recommended resale prices.

55. Horizontal cooperation between firms regarding prices, discounts and markups as well as cooperation with regard to tenders are also prohibited.

56. In 1988 provisions relating to mergers came into force. The Price Council was given the authority to stop a merger on the recommendation of the Price Directorate when such merger would lead to a dominating position in a market and harmfully weaken competition.

II. Enforcement of competition law and policies

57. Each year the political authorities lay down guidelines for the activities of the Price Authorities. The competition policy has undergone only minor changes during the last 10 years. The resources have mainly been addressed towards strengthening competition. Regulation and supervising of prices have only been used for a limited selection of goods and services such as some raw materials and foodstuffs. In addition a small number of products from dominant enterprises are being regulated.

58. The Price Authorities give priority to furthering competition by intervening against agreements considered harmful to the public interest.

59. The operation of the Price Authorities can be divided into three parts:

Administrative sanctions
criminal sanctions
opinions on governmental regulations

1. Administrative sanctions

Interventions against loyalty rebate systems

60. During the previous year the Price Authorities have intervened against trade terms used by three large Norwegian firms. All three have a dominant position in their respective markets, a fact which makes it almost a must for retailers to stock their products. The loyalty rebate systems used by the firms constitute a powerful incentive for the retailers to concentrate their purchases and thus in effect close the door on other suppliers. The rebate system may furthermore lead to prices which are not cost related and thus bring about a less than optimum allocation of resources.

61. The intervention against the "Joh system" (the largest wholesaler of groceries in Norway) was described in our annual report last year. Since then the Price Directorate has intervened against Jotun A/S, a producer of paints and varnish with a quite large market share.

62. Jotun A/S introduced a new loyalty based bonus as part of its marketing mix. The bonus was designed to vary with the percentage of the retailers total purchases of those products which Jotun could supply which actually had been bought from Jotun. The bonus would be calculated at a steeply rising rate, thus giving a very strong economic incentive to buy exclusively from Jotun. The Price Directorate came to the conclusion that the loyalty bonus would have detrimental effects on competition and harm production and trade in the paint and varnish market.

63. The Price Directorate has also intervened against Saba Mølnlycke A/S which has a very considerable market share for sanitary towels and diapers. Saba gave the retailer a concentration bonus of 4 per cent if the retailer made Saba their sole supplier of these products. If the retailer bought any of these products from another supplier he lost the bonus.

64. The Price Directorate was of the opinion that the bonus resulted in a substantial reduction of competition and might even have led to higher consumer prices. Furthermore the wholesale prices would not reflect the actual production costs.

Intervention against a vertical agreement

65. The Price Directorate has intervened against the agreements between the steel wholesalers and Norsk Jernverk and Christiania Spigerverk. The two firms have a very dominant market position for iron and steel products.

66. Norsk Jernverk is the only domestic producer of reinforcing rod and wire and has a dominant position for the the product.

67. In 1989 Norsk Jernverk submitted a new dealers agreement to take effect on 1 January 1990. In this agreement the dealer had to pledge himself to abstain from buying reinforcing rod and wire from any other supplier. Importing reinforcing rod and wire would be considered as a breach of contract and would result in an immediate voiding of the agreement.

68. The Price Directorate found the agreements to be an abuse of market power and unduly restricting the possibility of competition from imported iron.

69. The agreements drawn up by Christiania Spigerverk contained much the same clauses.

Exemptions from the prohibition of price cooperation

Price list for second hand cars

70. For a number of years the Norwegian Association of Motor Cars Dealers and Service Organizations has been given exemption from the general prohibition against price fixing agreements for issuing a list containing prices for used cars.

71. In 1990 the Price Directorate turned down a request to renew the exemption. The reason for turning it down was that prices in the list should be based on the actual transaction prices at a number of car dealers in Oslo. The final setting of list prices should however be done by a committee.

72. The Price Directorate maintained that the prices in the list must be real and based on statistics of prices realized and not on the discretion of the committee. Prices in the Oslo region would also dominate the statistics and thus influence prices countrywide. The normative effect of the list would be most unfortunate. The Price Directorate is of the opinion that the consumers would stand to lose from a list in which prices are not in line with the actual market prices.

Intervention against ethical rules

73. In 1991 the Price Directorate intervened against some of the Provisions in the ethical rules of the Norwegian Dental Association which were found to be in restraint of competition and detrimental to the public interest.

74. The provisions restricted the conduct of the members in four areas. They placed restriction on the kind of information allowed in advertising dental services, a dentist could not for instance make a point of using special methods of dentistry or special instruments or act in any way which might be considered unfair towards his colleagues. A specialist was obliged not to undertake general dental work on a patient but refer him to the dentist he normally frequented. A dentist was further obliged not to accept a new patient without ascertaining that the patient had paid his former dentist. Finally certain restrictions on where a dentist was allowed to set up surgery or start ambulating service was voided.

75. The provisions were held to prevent efficient competition.

Mergers

76. In the course of 1990 the Price Directorate became aware of 407 planned or effected mergers. Nineteen of these have been subjected to an inquiry, after which 16 were allowed to go forward.

77. In December 1989 the Price Council intervened against Nora, the largest Norwegian brewery, for buying shares in Tou, a brewery dominant in its local market. Nora had increased its ownership in Tou to 31.8 per cent with the intention of acquiring full control. The Price Directorate took the view that a merger would further weaken an already severely limited competition in a number of local markets and would therefore be detrimental to the public interest. Nora maintained that the merger was necessary to enable the company to withstand competition from abroad and also to make expansion abroad possible. The Price Directorate argued that the company had not shown that the merger would result in increased productivity, competition from abroad in the relevant markets was very weak and the advantage to Nora from the takeover would only be to increase its ability to gain further market power. The Price Directorate asked Nora to reduce its holding in Tou to 10 per cent. Nora disagreed. The case was brought before the Price Council which ordered Nora to reduce its holding to 10 per cent.

78. In May 1990 Nora and Tou agreed to merge. The Price Council decided to hear the merger as a separate case. Nora argued that the market had changed since the case was last heard:

- Tou would not in the long run be able to survive as a separate firm.
- A system of deposit for and the return of cans for beer and soft drinks which would shortly be introduced would increase competition in the market.
- The merger would be of paramount importance for the relation to Coca Cola.
- Nora would establish a dual channel sales system which would maintain competition in the market for beer and soft drinks.

79. The Price Directorate found that the changes in market conditions which Nora had pointed out did not carry sufficient weight to justify a change of its former opinion. The Price Directorate consequently advised the Price Council to forbid the merger.

80. The majority of the members of the Price Council did not agree with the Price Directorate but gave consideration to the changes in market condition which Nora had stressed. Although a merger between Nora and Tou would have certain adverse effects on competition the majority did not find sufficient reason to forbid the merger.

The merger between UNI/Storebrand

81. In June 1990 UNI, the largest Norwegian life insurance company and Storebrand, the leading general insurance company agreed to merge. UNI is also active in general insurance and Storebrand has a considerable market share in life insurance.

82. The consequences of the merger was given extensive consideration by the Price Directorate.

83. The merger was seen to effect competition in general insurance to a greater degree than life insurance.

84. In most sectors of general insurance the merger would result in a considerable increase in concentration. The possibility of use of dominant position and the establishment of price leadership would seem to be stronger in those sections of insurance where small and medium firms write general insurance policies and in the market for private fire insurance.

85. On the other hand previous experience shows that companies which have merged tend to lose market share. Furthermore the most important competitors have entered into a cooperation agreement with groups of Swedish insurance companies.

86. The Price Directorate found no reason to ask the Price Council to act against the merger.

2. Criminal sanctions

87. A principal duty of the Price Directorate and the Price Inspectorate is to make sure that the provisions regarding agreements in restraint of competition are observed. In 1990 the Price Directorate has reported one case of violation to the police. In addition fines to the amount of NOK 3.2 million have been imposed and accepted. A further seven cases, some of which are nationwide, are under consideration by the prosecuting authority.

3. The role of the competition authorities in the formulation and implementation of other policies

88. Laws and provisions issued by other government authorities may have harmful effects on competition and may lead to loss of efficiency. The guidelines issued by the Norwegian Parliament instruct the Price Authorities to consider the harmful effects of new regulations.

89. In the course of 1990 the Price Directorate has commented on various provisions issued for environmental reasons. The Price Directorate have the opinion that in some cases these measures may have detrimental effect on competition.

Dry Cleaning

90. For environmental reasons the National Pollution Authority has proposed to introduce a system of authorization for dry cleaners. In a statement to

the Ministry of Labour and Government Administration the Price Directorate held that the proposed provisions would restrict entry to the market. The new provisions would cause economic problems for some enterprises and might even drive some into bankruptcy. The authorization system would lead to reduced competition in the dry cleaning market.

91. The Price Directorate has also commented on environmental provisions for cold storage plants, for the composition of fertilizers and for the production of reusable packaging, provisions all of which to some extent would be in conflict with efforts to encourage competition.

The market for generic medicine

92. The Price Directorate has made a further statement to the Ministry of Labour and Government Administration concerning the market for prescription drugs.

93. Development, production and sale of drugs are dominated by a few large enterprises. For that reason prices and markup are agreed upon through negotiation between representatives for the Norwegian and foreign producers and the Ministry of Health. A section in the special law regulating the sale and production of drugs places a limit on the number of parallel drugs allowed on the Norwegian market. This may make the selection of drugs for a particular patient easier, but new and cheaper brands find it difficult to gain access to the market. The system also results in reduced competition in the market.

94. In the letter to the Ministry, the Price Directorate suggested that new brands of a drug should be given access to the market if cheaper than those already on sale and of a guaranteed quality.

95. For vital drugs prescribed as such by a doctor, 80 per cent of the cost are met by the National Health Insurance Administration. The fact that only 20 per cent of the costs are paid by the patient must lead to little price consciousness and therefore to increased public expenses. The Directorate proposed to base the reimbursement on the cost of the least expensive brand of the drug in question or base the reimbursement on the average cost of the different brand of the same drug. Any of these systems would reduce the cost to the public purse.

The importation of plants

96. In 1989 the Ministry of Agriculture introduced new provisions covering the importation of plants.

97. A large amount of nursery products are imported to Norway. Some plants are not produced at all in Norway.

98. To obtain an importation authorization a market garden must have a turnover of a certain magnitude. A number of small market gardens lost their permit to import potted plants when the new provisions were introduced. In a letter to the Ministry of Labour and Government Administration, the Price Directorate stated that the new provisions give small producers and market

gardens a serious competitive disadvantage. The firms which are permitted to import may also set high prices on imported plants in order to protect their own produce. The loss of competition may lead to higher prices and reduced efficiency in production and distribution. The Price Directorate asked the Ministry to keep the matter in mind and support a revision of the provisions. The provisions have since been amended; some restrictions will however stay in force for another three years. The Price Directorate has made a representation to the Ministry for an immediate lifting of the restrictions.

Discounts to certain groups of consumers

99. The Price Directorate has made an inquiry into the question of whether special discounts awarded to groups of consumers such as members of specific associations have detrimental effects on competition.

100. The main conclusion to be drawn from the investigation seems to be that no such effects can be proved. There is nothing to indicate that such forms of discounts should be prohibited out of hand. The price which the ordinary customer has to pay will not necessarily rise because of such discounts being given. Even if such rise should occur this would not necessarily have adverse effects in a broader economic view. In markets characterized by weak competition such discounts may in fact be a useful competition parameter.

101. These forms of discounts may also result in better use of production capacity by opening up new markets for the product or service. Some forms of such discount may however put a bind on the customer by making it costly to change supplier.

102. The inquiry has been sent for comments to various trade and consumers associations, trading groups and mercantile institutions. When their views have been received the Price Directorate will give guidelines as to how the various kinds of group discount should be treated.

UGANDA

103. The Government provided the UNCTAD secretariat with information relating to tariffs and non-tariff barriers, technology transfer, the Ugandan External Trade Act, and bilateral and multilateral agreements between States, such as the Preferential Trade Agreement arrangments.

SPAIN

104. The Government provided the UNCTAD secretariat with the following documents:

"Act on the Protection of Competition" - Official State Bulletin;

"1993 - A future to win" - Competition;

"Free competition in Spain" - Tribunal for the Protection of Competition 1986/1988;

"1990 Report" - Tribunal for the Protection of Competition;

"Act No.16/1989 of 17 July on Protection of Competition" (English and French).

SWEDEN

105. The Government stated that:

(a) No changes were made in Swedish RBP legislation in 1990.

(b) In 1989 the Competition Committee was set up. Under its directives, the Competition Committee has been charged with the task of finding out how the terms of competition have changed over the past decade, and of analysing the importance of competition for Swedish society's ability to attain the crucial goals of economic policy. The Committees remit also includes proposing measures that can make an effective contribution to enhancing competition, and considering changes in competition legislation.

(c) The Competition Ombudsman has continued to inform business circles and others in Sweden about the Set which already in 1981 was translated into Swedish and distributed i.a. to exporting Swedish enterprises.

(d) Sweden has made and received a number of notifications according to the 1986 OECD recommendation concerning cooperation between member countries on restrictive business practices affecting international trade. Also a number of exchanges of information with OECD-countries has taken place. As concerns other bilateral contacts the Swedish Competition Ombudsman had two visits by delegations from Czechoslovakia with among others Doctor Ivan Haluska, Vice-Minister for Matters of Price, for discussions concerning competition policy and application of competition legislation. A number of other bilateral exchanges of information on RBP-issues has also taken place. The Competition Ombudsman i.a. had a visit by the head of the Korean competition authority. The Competition Ombudsman has also participated in a Swedish-Soviet Round-table Conference arranged by the Swedish Ministry for Foreign Affairs at which were discussed actions against monopoly and other restraints of competition. In November 1990 a delegation from the Soviet Union visited the Swedish Competition Committee for the purpose of having viewpoints on a draft of Soviet Competition legislation.

(e) Sweden has continued to provide financial and personal resources to techniacal assistance on a multilateral basis. Thus Sweden together with Norway provided financial resources through the UNCTAD RBP Trust Fund for a Seminar on Restrictive Business Practices in Caracas, Venezuela in September 1990. A major objective of the seminar, in which 15 Latin American countries took part, was i.a. to assist Latin American countries in strengthening their capacity to adopt and effectively enforce appropriate legislation and to implement procedures for the control of restrictive business practices, including the setting-up of restrictive business practices control authorities.

106. Further, under a mandate from the Government, the Competition Committee has in July 1991 put forward a draft of a new Competition Act and a new organization for the application of the Act.

Objectives or purpose of the law

107. In the proposed new Competition Act the targets of competition legislation have been outlined and linked to basic economic and political objectives. This formulation of targets assumes that competition legislation seeks to influence not only conditions in business and industry, but also conditions in large segments of the public sector.

108. The purpose of the Competition Act should be to create and maintain efficient competition that:

(1) Promotes rational production and sound resource utilization;

(2) Helps to open up markets and promote the setting-up of new companies and development of new products;

(3) Results in lower prices;

(4) Gives consumers and other purchasers freedom of choice and scope for influencing the supply of goods and services.

Restrictive agreements or arrangements

109. The Committee considers that the present principle of abuse constitutes too weak a form of safeguard to prevent horizontal price cooperation that impairs competition and the efficiency of the market economy.

110. It proposes a prohibition on horizontal cooperation that includes a substantial share of the market. The prohibition will, according to the proposal, apply to agreements and to the application of joint restrictions on competition, but also to pressure exerted for the purpose of bringing about an agreement and joint action. The proposed prohibition covers cases that involve the setting of a particular price or discount, as well as the issue of various forms of recommendations on prices or discounts.

111. The Committee also proposes a prohibition on the division of markets between entrepreneurs who together account for a substantial share of the market. It is proposed that this ban should apply to quotas and segment allocation as well as various forms of supply restriction.

112. The Committee has opted not to define in its draft legislation what should be considered a "substantial share" of the market. On the other hand, it has proposed a rule of thumb to guide the application of the law, in specifying 20 per cent as a suitable limit.

113. The Committee proposes that the present prohibition on collusive tendering cartels should be retained alongside the general ban on price cooperation. However, the current exemption for sales organizations should be abolished.

114. The exemption for a collective undertaking with a joint tender (consortium) should be explicitly restricted to cases where the participants have insufficient resources to carry out the undertaking on their own, or where the customer approves the cooperation.

115. The Committee also proposes that the prohibition on resale price maintenance in the Competition Act should be included in the new Act. The sphere of application of this provision should be extended somewhat so that the prohibition applies not only to sale, but also to hire.

116. The general clause constitutes the central provision in the present Competition Act. It may be employed against all types or restriction on competition. The Committee finds that the general clause has performed an important function and should be included in the new Act.

117. According to the new provision on abuse, the Market Court should take action if a restriction of competition contravenes the purpose of the Act by inhibiting, or being liable to inhibit, the incidence and development of efficient competition, and if this takes place in a way that is harmful from the general point of view. This "competition test", as it may be called, resembles the competition test applied in the EC procedure for reviewing company acquisitions.

Abuse of a dominant position and acquisitions

118. When it comes to abuse of a dominant position, the Committee proposes a special provision specifying, in concrete terms, the application of the general clause. If one or several entrepreneurs occupying a dominant position on the market engage in a practice that restricts competition and represents abuse of that position, the practice is to be considered harmful. "Abuse" may cover the following practices, in particular:

(a) Unfair treatment of other entrepreneurs with respect to prices, discounts or other business terms relating to purchase or sale;

(b) Exclusive agreements and similar practices that tie up suppliers or channels of distribution;

(c) Refusal to sell and other forms of withdrawal from a business relationship without objective grounds;

(d) Stipulation as a condition of an agreement that the other party approve supplementary work that, neither in its nature nor according to commercial practice, is in any way connected to the object of the agreement.

119. A dominant position should, under the new Act, be regarded as existing if a company has a considerable influence on the market and can act without having to fear serious reactions on the part of present or potential competitors. A market share of around 40 per cent may, in the Committee's opinion, suffice in many sectors to attain dominance.

120. The Committee proposes that it should be possible to prohibit a company acquisition if it:

(a) Creates or strengthens a dominant position that considerably inhibits, or is liable to inhibit, the incidence and development of efficient competition on the market in question; and

(b) These effects are harmful to the public interest.

121. The Committee proposes compulsory reporting of acquisitions that may be regarded as particularly strategic from the viewpoint of examinantion. The Competition Board must, not later than 30 days after the acquisition is reported, decide whether to carry out a more detailed investigation. During this period, companies may not take any steps to complete the acquisition.

122. The Committee proposes that the Competition Act should also afford an opportunity to break up strong business combines when this appears the only practicable way of achieving genuine competition.

Functions and powers of the administering authorities

123. The Market Court will be retained as the special law court for RBP cases. It will be possible to appeal the Court's decision to the Supreme Court. It is proposed that the Office of the Competition Ombudsman (NO) and the Price and Competition Board (SPK) are merged to form a new authority, the "Competition Board".

124. The functions of the Competition Board should include the following:

(a) Investigation and issuing of information on prevailing market conditions, with the purpose of making it easier for various market players to act in such a way that efficient competition is attained;

(b) Elimination of restrictions on competition by applying the Competition Act in individual cases;

(c) Deregulation and measures to promote competition in the public sector.

SWITZERLAND

125. The Government of Switzerland stated the following:

Item (i)

126. The legislation on cartels has not been amended in 1990. The applicable law remains the Act which entered into force on 1 July 1986.

Item (ii)

127. Swiss law on cartels is applied either by the Cartels Commission (A) or by the civil court judge (B). In principle, the Cartels Commission deals with cases involving the public interest, whereas private cases are the concern of the civil court judge.

A. The activities of the Cartels Commission are set out in detail in its annual report for 1990; (Publ.CCSPr 1a/1990). The report contains a summary of the main cases handled; it thus complies with UNCTAD's request. The annual report is published simultaneously in French and German. The Cartels Commission is presided over by Professor Pierre Tercier (Fribourg); Mr. B. Schmidhauser (Director) is in charge of the secretariat. Its address is: Belpstrasse 53, 3003 Berne.

B. Judgement was rendered by the Swiss Federal Court in the case of Swiss Bankers Association v. Federal Department of the Public Economy. The judgement is published in German only (Publ.CCSPr 1a/1990, p. 85 et seq.). It relates to the specific problem of the right to consult the records of an inquiry.

Item (iii)

128. The Swiss authorities have not issued any studies, guidelines or relevant reports on questions relating to restrictive business practices. Mention should, however, be made of two substantive articles by the Director of the secretariat which appeared in the official publication La vie économique. These are (a) "Protection des consommateurs grâce à une concurrence efficace" ("Consumer protection through effective competition") (4/1990); and (b) "Achats publics et concurrence" ("Public purchasing and competition") (8/1990).

THAILAND

129. The Government supplied the UNCTAD secretariat with a copy of the Price Fixing and Anti-monopoly Act B.E. 2522 (1979), which is currently under review.

UNITED KINGDOM

130. The Government provided the UNCTAD secretariat with an annual report on developments in the United Kingdom, 1990, which is reproduced below.

I. Changes to competition laws and policies adopted or envisaged

A. Summary of new legal provisions in competition law and related legislation

(i) Mergers Control - procedural changes

131. No changes in the basic competition legislation were enacted in 1990. Certain procedural changes affecting merger control came into force during the year however. Under provisions of the Companies Act 1989, a voluntary

prenotification system has operated since 1 April 1990, and a charge, varying between £5,000 and £15,000, has been payable since 1 October 1990 for most mergers which meet the statutory criteria for reference to the Monopolies and Mergers Commission ("the MMC").

(ii) European Community Merger Regulation

132. The adoption of the European Community regulation on merger control (Council Regulation No. 4064/89) which came into operation on 21 September removes from the United Kingdom jurisdiction those mergers with a "Community dimension" as defined in the Regulation, except in the limited circumstances specified. Procedures have been developed to enable the United Kingdom authorities to perform their functions under the Regulation, including "close and constant" liaison with the Commission.

(iii) Misleading information

133. Since 1 April it has been a criminal offence to give false or misleading information to the competition authorities.

(iv) Restrictive Trade Practices

134. The Government did not in 1990 introduce legislation to bring into force its proposals of July 1989 to reform the United Kingdom law on restrictive agreements and cartels. There were changes, however, in how the competition legislation is to apply in two sectors, one the rules of the legal profession, the other broadcasting.

(v) The Courts and Legal Services Act 1990

135. The Courts and Legal Services Act 1990 introduced a new framework for granting rights to conduct advocacy and litigation in the courts. There are provisions for the Director General of Fair Trading ("the Director General") to advise on the competition effects of the rules and regulations applied to those who obtain these rights. These provisions have some similarities with the special competition regimes in the 1986 Financial Services Act and the auditor provisions of the 1989 Companies Act.

136. The 1990 Act also introduces a procedure for authorizing persons other than solicitors and licensed conveyancers to provide conveyancing services. There is again provision for the Director General to advise on the competition effects of the requirements imposed on these authorized persons.

(vi) The Broadcasting Act 1990

137. The Broadcasting Act 1990 made radical changes in the organization and regulation of broadcasting in the United Kingdom with the object of licensing competition and choice. The wider range of commercially provided radio and television services will be regulated by two new authorities, the Independent Television Commission ("the ITC") and the Radio Authority.

138. The Act brings the broadcasting sector within the scope of the competition legislation administered by the Director General. It also gives the Director General two specific new tasks. The first concerns any system for collective programming (networking) on Channel 3 (which will replace the existing main commercial television channel from 1993). Channel 3 programmes will be provided by a number of regional licensees. Networking involves cost sharing and the simultaneous transmission of programmes by all licensees. The Director General must consider the competition implications of such arrangements. If necessary, he can require them to be changed.

139. The second task is to monitor the extent to which the BBC commissions programmes from independent programme producers. (The ITC has a similar function for the commercial channels.)

B. Changes in competition law rules, policies or guidelines

Merger references

140. The Fair Trading Act empowers the Secretary of State to refer mergers to the MMC for investigation on public interest grounds including competition if either gross assets of more than £30 million are acquired or the merger would create or enhance a market share of 25 per cent or more in the United Kingdom or a substantial part of it. The present Government's policy is that the major factor which should determine whether a reference is justified is the effect upon competition in the United Kingdom.

141. However, on 26 July 1990, the Secretary of State for Trade and Industry announced that he would in future pay particularly close attention to the degree of State control, if any, of the acquiring company. His concern was that State-controlled companies can be insulated from the full play of market forces, not least because they rarely face the threat of financial failure, and can, indeed, adopt policies or practices which can restrict or distort competition. The Secretary of State emphasized that all bids by State-controlled companies would be treated even-handedly and that he would consider each case on its merits having received the advice of the Director General.

142. By the end of 1990 five mergers in which State control was an issue were referred to the MMC (in three cases against the advice of the Director General) but the reports of those investigations which were completed during the year had not been published by the end of 1990.

II. Enforcement of competition law and policies

A. Action against anti-competitive practices by competition authorities and courts

143. The following paragraphs describe the main enforcement action under each of the United Kingdom's competition statutes. By way of introduction, 1990 was a particularly active year for enforcement of the law on secret cartels and for merger control. For the first time proceedings were initiated for contempt of court against individual managers involved in an unlawful

agreement (see para. 21 below) while on mergers, there were 27 references to the MMC in 1990, more than twice as many as in any previous year (see para. 55).

(i) Restrictive agreements (Restrictive Trade Practices Act 1976)

144. The Restrictive Trade Practices Act requires qualifying agreements to be notified to the Director General before their restrictive elements begin to operate. The Director General must enter registrable agreements on a public register, assess their effects on competition and take action as appropriate. During the year 676 agreements were entered on the register, giving a grand total of 9,300 registered agreements since the legislation was enacted in 1956. Details of 1,476 agreements were notified to the Office during the year. Registrations and notifications were lower than in 1989, largely because of exemptions introduced in 1989 for certain sale and purchase and share subscription agreements which are unlikely to have any significant effect upon competition. However, the underlying trend suggests a continuing increase in notifications.

145. In recent years it has been rare for an agreement that has been properly notified for registration to be referred by the Director General to the Restrictive Practices Court ("the Court") for adjudication. Usually, sometimes after a process of negotiation and modification of the agreement, he is able to conclude that the restrictions are not of such significance as to warrant investigation by the Court. In 1990 he reached this conclusion on 467 agreements.

146. Court proceedings were, however, commenced on the agreement between Satellite Information Services Ltd ("SIS") and the Race Course Association Ltd ("RCA") and its members. SIS is owned by the major United Kingdom bookmakers. It sends live televised coverage of horse racing to betting shops and other outlets and for this purpose it obtains certain services from RCA members. If the RCA and its members supply similar services to a third party on more favourable terms than to SIS, under the agreement they are required to reduce the fee payable by SIS accordingly. In the view of the Office this is a significant anti-competitive restriction which deters others from setting up in competition with SIS, currently the sole supplier of information services to betting shops.

147. In the Institute of Insurance Brokers case, the Director General used for the first time his power under Section 3 of the Act to seek an interim order prohibiting the parties from giving effect to the restrictions in a lawful agreement until the Court could conduct a full hearing of the case. The Institute of Insurance Brokers ("IIB") is an association of independent financial advisers. It recommended its members not to place any insurance business with the General Accident insurance company for an initial six month period from 1 January 1991. General Accident had been offering car insurance direct through certain motor manufacturers as part of the car purchase price. The Director General argued that the boycott could not reasonably be expected to be in the public interest. After a short hearing, the Court ordered the boycott recommendation to be withdrawn by the end of the year and prohibited IIB members from giving effect to it (on pain of contempt of court).

Secret agreements

148. The Office continues to discover agreements which, whether deliberately or not, have not been notified as required by the law. The main instrument for investigating suspected secret - and therefore unlawful - agreements is the issue of a Notice under the Act, known as a "Section 36 notice". Seventy-two such notices were issued during the year. Often the response to a Section 36 notice leads to the uncovering of a secret cartel. Where the agreement is blatantly anti-competitive, being concerned with price fixing, bid rigging or market sharing, the Director General will normally commence Court proceedings even if the parties have terminated the agreement.

149. Court action was taken during the year against 14 companies involved in price-fixing agreements in the glass manufacturing and distribution industries. In November undertakings were obtained from some companies and court orders made against the others preventing them from operating the agreements or any others "to like effect" and from making any other agreements without first notifying the Office. The proceedings followed investigations by the Office which began in the West Midlands area and subsequently led to the discovery of widespread covert cartel activities across the country, and over a wide range of glass products. The agreements were to apply common price increases at similar times and also to exchange information on prices.

150. Another price-fixing agreement heard by the Court in 1990 concerned Steel Concrete Re-inforcing Bars ("Rebars") used in the construction industry. In a hearing in November eight United Kingdom manufacturers admitted to a price-fixing agreement and gave undertakings to the Court not to continue the practice nor to make any registrable agreements without first advising the Office. These agreements had been brought to light as a result of investigations by the Office following receipt of a complaint from a West Midlands steel supplier. The Office found that between sometime in 1982/83 and 1988 the manufacturers had been holding informal discussions about increases in the list prices of rebar in the light of increases in raw material costs. An understanding developed that one manufacturer would increase its list prices first and that the others would then increase their own list prices by substantially the same amount.

151. There are no financial penalties for failure to notify the Office of a registrable agreement. However, breach of a Court order is likely to be contempt of court and to lead to fines, possibly imprisonment. In September the Court dealt with a contempt case involving suppliers of ready mixed concrete. Four companies, Hartigan Readymix Ltd, Smiths Concrete Ltd, Readymix Concrete (Thames Valley) Ltd and Pioneer Concrete (UK) Ltd were found guilty of contempt for carrying on unlawful price-fixing and market-sharing agreements in the Bicester area of Oxfordshire in breach of Court orders previously made against them. In addition, two individuals - a former employee of Smiths Concrete and an employee of the RMC Group - were found guilty of aiding and abetting the contempt committed by their respective employers. Representatives of the four companies had, between 1983 and 1984, been meeting together to fix prices and share out the market in the locality. All four companies, with others, had some five years earlier been subject to court orders or undertakings not to operate restrictive agreements without

first submitting them to the Director General. Fines were levied to a total of £81,000, which included fines of £1,000 and £1,200 on the two individuals, and the companies were also ordered to pay the Director General's costs. Although the fines were less than might have been expected, the judge made clear that the employees had come near to receiving prison sentences.

Prospective court proceedings

152. Court proceedings have begun in or are in preparation on a number of other agreements.

Eighteen distributors of thermal insulation material who were involved in two covert price-fixing agreements have been referred to the Court.

Further wide-scale cartel activity has come to light in the ready mixed concrete industry following continued investigations by the Office. At the end of the year 50 memoranda of agreements had been obtained and copies placed on the public register. The agreements cover large areas of England and Scotland and together the memoranda suggest that all the major manufacturers of ready mixed concrete have been involved in unlawful cartel activity.

At the end of the year proceedings were due to start against three major manufacturers of steel roofing purlins which had admitted participation in a covert market-sharing and price-fixing agreement, operated between 1983 and 1990.

Following a complaint from a consumer, the Office discovered that a group of distributors in the north east of the country had formed a fuel oil cartel in 1989 and agreed on formulae to fix a minimum price for kerosene 28, gas oil and derv. Although the agreement lasted only four months (it was terminated soon after the Office began its enquiries), the Director General has issued proceedings against the companies.

Court proceedings have also been commenced in relation to two agreements between bus operates about the fixing of bus fares and coordination of routes and timetables, one in Leicestershire, the other in the Plymouth area.

(ii) Resale price maintenance (Resale Prices Act 1976)

153. Under the Resale Prices Act, suppliers of goods are prohibited from imposing minimum resale prices on dealers or from compelling them to charge these prices by threatening to withhold supplies or by the imposition of other penalties. Thirty-nine complaints were received during the year of breaches of the Act and in five cases the Director General obtained written assurances from suppliers that they would not seek to impose on dealers minimum prices at which their goods could be re-sold.

154. In addition, Black & Decker, which had been the subject of an MMC report under the Competition Act 1980 (see paragraph II A (v) of the United Kingdom report July-December 1989), gave undertakings to the Director General with

regard to resale prices for its goods. Notwithstanding the general prohibition, the Resale Prices Act allows suppliers to withhold goods from retailers when they believe that the dealer has sold, or is likely to sell, the goods as loss leaders. Black & Decker have undertaken that loss leading will not be calculated by reference to any form of standard criteria but solely to the circumstances of the individual dealer's case. Moreover, should it withhold any goods on the grounds of loss leading, the company must inform the Director General and provide full particulars of the circumstances immediately.

(iii) Anti-competitive practices (Competition Act 1980)

155. The Competition Act provides for the Director General to investigate courses of conduct. If he concludes that a course of conduct is or is likely to be anti-competitive, then unless the party involved gives an undertaking which will eradicate the anti-competitive effect, the Director General may refer the matter to the MMC.

156. One Competition Act investigation was initiated by the Director General in 1990, into the loyalty rebate scheme of the British Coal Corporation ("BCC"). BCC pays to coal merchants a rebate of £1.50 per tonne on all tonnages of BCC bituminous products taken over an agreed period against a certified statement that the merchant has not traded during the period in any of these products which have originated outside the European Coal and Steel Community ("the ECSC"). BCC also pass to coal merchants a rebate of £2 per tonne on all tonnages of BCC naturally smokeless products taken over an agreed period against a certified statement that no more than 10 per cent of the merchant's total purchases of anthracite and dry steam coal were mined outside the ECSC.

157. Two reports on investigations initiated in 1989 were published during the year. The first, concerning Kingston-upon-Hull City Transport Ltd ("Kingston"), dealt with an allegation of predatory behaviour by that company in responding to competition on certain bus routes. Kingston had lowered its fares and increased service frequencies, but as the investigation revealed that Kingston had continued to make a profit on the contested routes the Office concluded that its conduct had not been predatory or anti-competitive.

158. The second case concerned Oracle Teletext Ltd, which provides the teletext services on ITV and Channel 4 in which it sells advertising space to a number of clients. A complainant, Televox, which provides additional and new services to teletext viewers by making available the facility, via telephone, to call up a wide range of information on TV screens, alleged that Oracle had placed their advertisements in unfavourable locations and had charged them more than comparable customers. The Director General found that the prices charged did not restrict Televox's ability to compete in the market and that subsequent to November 1988, Oracle had placed Televox's advertisements on their more popular pages. In the absence of any anti-competitive effect since November 1988, the Director General did not refer the matter to the MMC.

159. Should a matter be referred to the MMC after an investigation by the Director General, they must not only decide whether there is an anti-competitive practice but also whether it operates against the public interest. Relatively few Competition Act investigations proceed to this further stage. However, in 1990 the MMC published one such report, on an allegation of predatory behaviour by Highland Scottish Omnibuses Ltd (see paragraph II A (v) of the July-December 1989 report). The MMC confirmed the Director General's conclusion that Highland Scottish Omnibuses ("HSO"), by virtue of over provision of services whilst incurring substantial losses, had acted in an anti-competitive manner and also found this to be against the public interest. Two small bus companies went out of business, but subsequently a financially-stronger competitor had entered the market. In the MMC's view, this effectively removed the risk of repetition of any predatory conduct and the need for any further action by the United Kingdom competition authorities.

(iv) Monopoly situations (Fair Trading Act 1973)

160. The Director General is required by the Act to keep under review "monopoly situations" - essentially situations when one company has 25 per cent or more of the United Kingdom market or where a number of firms have 25 per cent or more of the market between them and pursue policies which restrict competition in some way - a "complex monopoly". Where such a monopoly situation is believed to exist the Director General can refer it to the MMC for investigation. There is no presumption that a monopoly as such is against the public interest, or that possible monopoly situations, when identified, should always be referred. On a reference it is for the MMC to determine whether a monopoly situation does exist and, if so, whether it operates or may be expected to operate in any way against the public interest. These powers enable a wide range of market structures and business conduct to be investigated by the MMC.

161. In 1990 the Director General made seven monopoly references: Soluble Coffee, Carbonated Soft Drinks, New Motor Cars, New Motor Car Parts, New Housing Warranty Services, Razors and Razor Blades and Photocopiers.

162. The soluble coffee reference was stimulated by the delayed adjustment of the manufacturers' prices of soluble coffee to the fall in the world price of the raw material in a market dominated by Nestlé. In carbonated soft drinks the Office had, following increased concentration in the market, received various complaints of anti-competitive behaviour by the leading suppliers. The cars and car parts references were mainly concerned with the effect of the industry's franchised dealer system and the evidence that car prices in the United Kingdom were persistently higher than in much of the rest of the Community. The new housing warranty services reference arose from the impact of one of the rules of the National House Building Council on the development of warranty schemes competing with its own Buildmark scheme. The razor and razor blades reference is an unusual one in that it is combined with a merger reference (see para. 55) to deal with the possibility that the transaction involving Gillette and Wilkinson Sword might not qualify as a merger under the merger control legislation. The photocopiers reference is concerned with the requirement by several suppliers that customers take their toner as a condition of supply of the copier.

163. During the year four reports on monopoly references were published. In their report on the supply of petrol published in February the MMC found that a complex monopoly situation existed by virtue of the oil companies' ownership of petrol stations and a variety of vertical restraints in the relationship between the companies and retail outlets. However, the MMC's conclusion was that the industry was nevertheless competitive (there were up to 70 companies operating at the wholesale stage, 11 of them with refining capacity in the United Kingdom) and that nothing in the matters investigated operated at the time against the public interest. The MMC found that the price of petrol in the United Kingdom is primarily governed by movements in international market prices for both crude oil and refined petrol, price rises are not implemented more quickly than price reductions, United Kingdom prices are not out of line with those in European countries or movements in consumer prices, there was no evidence of collusion between the companies, petrol company profits on wholesaling have been no more than moderate in recent years, and that most consumers can choose from a range of prices and standards of service. Since there were no adverse findings, there was no question of remedies. However, the MMC noted that future changes could increase the scope for anti-competitive behaviour in the industry. Accordingly, the Director General will, after three years subject to any developments in the meantime, carry out a review of company ownership of retail outlets and an assessment of developments affecting competition.

164. Subsequent to this report the Director General made enquiries into the petrol pricing policies of the five major United Kingdom oil companies in the wake of price increases resulting from the Middle East crisis. He concluded that the industry's reaction to events in the Gulf had followed the pattern one would expect in a competitive market. The oil companies were continuing to determine their wholesale petrol prices in the way described in the MMC report earlier in the year. Excess profits did not appear to be generated at retail, wholesale or, to any great extent, refining stages of the industry. Though the demand for oil products soon after the start of the crisis had generated additional profits at the production stage, this was not the result of any failure of competition and left him no case to consider under competition legislation. It was a matter of general public policy, rather than competition policy, whether steps should be taken to moderate price rises or to re-distribute windfall profits. No action was subsequently taken as a result of this report.

165. In the report on electrical contracting services at London exhibition halls the MMC found that the preferential arrangements of five electrical contractors with certain large exhibition halls operated against the public interest in a number of ways. Remedies designed to achieve greater transparency and to encourage competition are still to be implemented since the MMC report has been the subject of judicial review.

166. In cinema advertising services, where there are only two suppliers, Rank Screen Advertising and Peal and Dean, the MMC found nothing in their investigation that operated against the public interest.

167. The report on the supply of plasterboard is of particular interest. Following an earlier investigation, in 1977, BPB Industries Ltd ("BPB"), the dominant supplier (indeed the only UK producer at the time), gave a number of

undertakings, mainly that it would abandon uniform delivered prices and charge prices in various zones of the country that reflected transport costs from the factory to that zone. The hope had been that this would facilitate new entry in parts of the country distant from BPB's plants. When Redland Plasterboard Ltd and Knauf UK GmbH did (much later) enter the market, BPB sought release from its undertakings. The Director General decided that the MMC should investigate these developments, and in the event the MMC concluded that BPB, while still the dominant supplier, was now subject to effective competition and could be released from the undertakings. The Government accepted this conclusion.

168. Action has also been taken during the year on earlier monopoly reports. Further to the MMC report on credit card services (see paragraph II A (vi) of the July-December 1989 report) the Credit Card (Price Discrimination) Order 1990 and the Credit Card (Merchant Acquisition) Order 1990 were laid before Parliament, and both will come into force on 28 February 1991. The former requires that the credit card companies' "no discrimination rule", under which traders are required to charge the same price for purchases made with credit cards as for those made for by cash or other means, be abolished before 7 March 1991. This Order does not affect debit cards or any payment cards other than credit cards. From the same date, the Merchant Acquisition Order makes it unlawful, subject to certain exceptions, for payment card organizations to enter into agreements which prevent any person authorized by them to carry on business as a payment card issuer in the United Kingdom from acting as a merchant acquirer in the United Kingdom for those organizations' cards. (Merchant acquirers make agreements with traders to accept Access or Visa cards and thereafter reimburse the traders, net of the agreed Merchant Service Charge, for these credit card transactions.)

169. The action foreseen on the supply of beer (see paragraph II A (vi) of the July-December report) has been taken. Monitoring compliance with the Government Orders designed to weaken the ties between the major brewers and their retail outlets (mainly public houses) has been a major activity of the Office during the year and included a large-scale survey of publicans, covering their purchasing patterns of beer, wines, spirits and soft drinks. The Office has also been monitoring the undertakings given by Pitney Bowes and Roneo Alcatel, now Alcatel Business Systems, further to the 1986 report by the MMC on the supply, maintenance and repair of franking machines. These were aimed to open up the market to approved, independent dealers and maintenance organizations. Breaches of the undertakings, with regard to the provision to prospective customers of price lists and other information, were discovered. The company gave assurances these will not recur and the Secretary of State decided that at this time he did not need to make a Statutory Order which would be enforceable in the courts.

170. On the supply of gas, following the MMC recommendations of 1988 (described in the United Kingdom report 1988), British Gas has now formally agreed not to contract for more than 90 per cent of deliveries from any new gas field within the United Kingdom continental shelf. British Gas has also given an undertaking actively to facilitate the efforts of gas producers towards achieving the target that 10 per cent of gas from new fields should be sold to suppliers other than British Gas. A review of this undertaking was conducted in the summer of 1990 which showed that 30 per cent of new gas

contracted in the year up to May 1990 was sold to purchasers other than British Gas. Of this, 98 per cent was sold to the power generation market. The remaining 2 per cent - about half of 1 per cent of the total gas contracted in the monitoring period - was contracted for sale to the general industrial and commercial gas market.

171. By the end of the year, five independent gas suppliers were established though their deliveries of gas to industrial and commercial customers were very small in comparison to the market as a whole. The quantities of gas available to new suppliers have continued to be a major constraint on the development of competition. In response to this concern, British Gas has agreed to release some of its own contracted gas supplies back to producers to increase the availability of uncommitted supplies over the next two years. British Gas is prepared to release the equivalent of up to 10 per cent of the total contract market in this way.

172. The advent of independent suppliers using the British Gas system for carriage has not given rise to major problems. No further directions in respect of common carriage have been issued by the Director General of Gas Supply ("DGGS") over the year. British Gas has twice reviewed its carriage tariffs and these no longer seem to be a cause for complaint.

173. The price schedules introduced following the 1988 MMC report and operated by British Gas continue to give rise to serious complaints. A number of the changes introduced in the autumn proved to be particularly contentious and following representations from the DGGS these are being reviewed by British Gas.

(v) Financial Services Act 1986

174. The Financial Services Act introduced a new system of investor protection in the United Kingdom. It exempts those involved in investment business, widely defined, from the competition legislation, but provides for the Director General to examine the rules of the various regulatory organizations, investment exchanges and clearing houses operating under the Act and to report to the Secretary of State on their effects on competition. If the Director General reports adversely on any rule or practice then it is for the Secretary of State to strike the balance between competition and investor protection and, as appropriate, to require changes in the rules.

175. The Director General made four reports in 1990, three of which concluded that the rules or arrangements in question were likely to give rise to significantly anti-competitive effect. The first of the adverse reports concerned The Securities and Investment Board's (SIB's) rules on the disclosure of information about life insurance products and unit trusts. The rules related to disclosure of commissions paid by life offices to independent financial advisers, expenses incurred by life offices, including their marketing costs, and the status of advisers. The new provisions did not require the disclosure of commissions or charges by intermediaries at or before the point of sale and, moreover, allowed for commissions to be disclosed as a percentage of premium, while charges were to be disclosed as a percentage of investment yield. The Director General believed that the rules did not provide the investor with the information he needed in a sufficiently

comprehensible format nor at an early enough stage to make an informed investment decision and inhibited competition between different sources of advice and different marketing channels for life office products. The Secretary of State, after extensive consultation with interested parties, concluded that the disclosure rules were likely to restrict or distort competition to a significant extent and asked SIB to propose changes to lessen this anti-competitive effect and to introduce new rules within 18 months.

176. The second report, also made in April, concerned changes to the rules of the International Stock Exchange ("the ISE") on trade publication and price transparency. One rule change meant that publication of the prices at which trades by market makers in alpha shares worth more than £100,000 were done was to be delayed by 24 hours. The Director General took the view that this delay deprived the market of information relevant to the determination of the price of shares, and gave trading opportunities to those market makers involved in the trades which were denied to their competitors. He argued that this would lead to a cross subsidy by those involved in smaller transactions to those involved in large transactions and that market makers who undertook large trades would have a competitive advantage over rivals and in time smaller firms and recent entrants were likely to find it difficult to compete. He did not find any evidence to support the ISE's view that on-line publication had led to less liquidity or that there had been a major problem of off-exchange dealings before these rules were introduced. Indeed as they withheld a significant amount of information from the market, diminishing its efficiency and increasing uncertainty, this could actually harm the market's liquidity. The Exchange has now made further changes to its rules reducing the delay in publication of trades to 90 minutes and redefining the trades to which the publication delay applies. The DGFT accepted that there were deficiencies in the available evidence on the impact of delayed publication on competition. His conclusions were therefore based on primarily a priori analysis. After commissioning further research, the Secretary of State concluded that the available evidence did not suggest that the Exchange's rules on publication were necessarily anti-competitive. But he asked the Director General to keep the rules in this area under review.

177. The third adverse report also concerned the ISE, in this case their arrangements for regulating the distribution of company information. The Director General concluded that the ISE's information vending services, including Topic, were given privileged early access to information acquired for regulatory purposes. This disadvantaged the Exchange's commercial competitors. There was also the possibility of cross-subsidy of the Exchange commercial information vending services by the charges imposed by it for regulatory functions, and of diminished pressure on it to contain costs and charges. The Director General noted that the Exchange intended to replace the present arrangement with two new services, a Regulatory News Services ("RNS") and a Commercial Company News Service ("CCNS"). RNS was to be a non-profit-making service, passing company news to commercial vendors of information, including CCNS. All information vendors subscribing to RNS, including CCNS, would be on an equal footing and would receive information simultaneously. However, the Director General was concerned that the proposed charge would act as a barrier to potential competitors to CCNS since too small a proportion of the cost was to be recovered from the listed companies. Thus,

while the new arrangement would be a welcome improvement in many respects, it would not satisfy all his concerns. The Secretary of State had not made a decision on the Director General's report by the end of the year.

(vi) Telecommunications

178. A major development affecting competition policy in the telecommunications sector in 1990 was the commencement of a review of the United Kingdom "duopoly policy" in telecommunications. The Government announced in November 1983 that it did not intend to license operators other than British Telecommunications plc and Mercury Communications Ltd to provide the basic telecommunications service of conveying messages over fixed links, both domestically and internationally, for a seven-year period, after which time a review would be carried out. In November, the Department of Trade and Industry published a consultative document on the future of telecommunications in the United Kingdom entitled "Competition and Choice: Telecommunications Policy for the 1990s". The principal recommendations of the document were:

The duopoly policy in local and trunk telecommunications networks should be ended, and the Government should consider favourably applications for licences to run new systems in these areas.

The Government should consider allowing the existing mobile operators to run fixed link services.

BT and the other national public telecommunication operators (PTOs) should not be allowed to provide entertainment services over their main networks for a period of 10 years from the completion of the review. This commitment may be reconsidered after 7 years in the event that the Director General of Telecommunications advised that such a move would enhance competition.

The document also gave support for the progressive introduction of "equal access", by which customers of local telecommunications systems would be able to choose their preferred trunk operator for the trunk segments of long distance calls, without having to sign up as customers of another network or obtain special equipment.

179. Over 190 written responses were made by the mid-January 1991 deadline for comments on the proposals. The Government will announce its conclusions as soon as all representations have been fully considered.

180. Investigations have been made into the economic effects of allowing the simple resale of international private leased circuits. "Simple resale" refers to a call starting on a public network, going over a private circuit or network and then being routed back out into the public network. Domestic simple resale has been allowed since 1989, but restrictions remain on the use of international private circuits, including a prohibition on their use for simple resale. The Director General of Telecommunications has recommended to the Secretary of State that this prohibition should be removed, provided that a reciprocal arrangement is in force in the other country involved. The Secretary of State was considering this recommendation at the end of the year.

181. The Office of Telecommunications carried out a survey to research the effectiveness of competition in switched telephony services. Although the findings indicated room for improvement in a few areas, and these are being pursued with the companies concerned, in general the survey showed that there was no evidence of widespread or systematic practices which would significantly inhibit competition in switched voice telephony services.

B. Mergers and concentrations

(i) Summary of merger activity

Table 1: Merger activity: 1980-1990

Proposals qualifying under the Fair Trading Act							Business Bulletin	Fair Trading Act cases as percentage of industrial and commercial cases	
All cases					Industrial and Commercial		Industrial and Commercial		
Year	Number		Assets bid for £m		Number		Number		
1980	182	(115)	22 289	(21 042)	141	(89)	469	30.0	(19.0)
1981	164	(105)	43 597	(42 537)	126	(79)	452	27.9	(17.5)
1982	190	(122)	25 939	(24 494)	144	(93)	463	31.1	(20.1)
1983	192	(129)	45 495	(44 275)	143	(104)	447	32.0	(23.3)
1984	59	(223)	80 688	(79 957)	200	(165)	568	35.2	(29.0)
1985	192		57 488		144		474	30.4	
1986	313		123 331		238		842	28.3	
1987	321		121 911		279		1 527	18.3	
1988	306		98 902		276		1 499	18.4	
1989	281		96 109		258		1 077	24.0	
1990	261		115 485		227		778	29.1	

Figures in brackets show the outcome if a £30 million assets criterion had been in operation throughout 1980-84. The assets criterion was previously raised from £5 million to £15 million on 10 April 1980.

Sources: Office of Fair Trading and Central Statistical Office's Business Bulletin: Acquisitions and Mergers.

* The industrial and commercial category is all cases excluding SIC categories between 8100 and 8339.

Table 2: Analysis by size of gross assets of target company: 1990

Size of assets £m	Number	Total assets £m	Average assets £m
0-24.9	48	257	5.4
25-49.9	51	1,845	36.2
50-99.9	50	3,519	70.4
100-249.9	43	6,599	153.5
250-499.9	23	7,742	336.6
500-999.9	25	18,262	730.5
1,000 and over	21	77,262	3,679.1
Totals	261	115 485	442.5

Source: Office of Fair Trading

Table 3 : Analysis by main activity, number, assets size and nationality of target companies: 1990

Industry	Number	Assets £m	Average assets £m	Foreign companies	
				Target Number	Bidding Number
Agriculture, forestry and fishing	1	8	8	-	1
Coal, oil and natural gas	4	17,182	4,296	3	3
Electricity, gas and water	1	39	39	-	-
Metal processing and manufacturing	7	249	36	3	1
Mineral processing and manufacturing	9	6,850	761	6	4
Chemicals and man-made fibres	27	6,437	239	14	14
Metal goods (not elsewhere specified)	6	101	17	-	2
Mechanical engineering	16	2,666	167	7	8
Electrical engineering	16	1,834	115	3	7
Vehicles	8	3,979	497	3	1
Instrument engineering	2	56	28	1	2
Food, drink and tobacco	24	11,462	478	7	7
Textiles	1	6	6	-	-
Leather goods and clothing	3	182	61	-	1
Timber and wooden furniture	3	481	160	-	1
Paper, printing and publishing	8	2,139	267	2	5
Other manufacturing industries	4	173	43	1	1
Construction	3	893	298	1	-
Distribution	23	3,529	153	1	8
Hotels, catering and repairs	10	2,583	258	-	-
Transport and communication	18	1,737	97	2	2
Banking and finance	22	39,666	1,803	4	9
Insurance	11	3,907	355	1	5
Ancillary financial services	3	73	24	-	1
Other business services	22	7,397	336	2	8
Other services	9	1,856	206	-	1
Totals	261	115,485	443	61	92

Source: Office of Fair Trading

182. The Office examined 369 mergers and merger proposals in 1990, fewer than in the previous year. Out of this total the Director General gave advice to the Secretary of State on 261 cases which included 22 requests for confidential guidance.

183. Table 1 shows that there was a significant increase in the value of assets bid for in 1990 despite the decline in the number of cases. Table 3 (in comparison with the same table in last year's report) indicates that there was a strong increase, in 1990, in the number of mergers involving chemical companies and in transport and communication.

Table 4: Percentage of proposed mergers by number and value of assets of target companies classified by type of integration (1970-1990)

Year	Horizontal		Vertical		Diversifying	
	by number	by value	by number	by value	by number	by value
1970-74	73	65	5	4	23	27
1975	71	77	5	4	24	19
1976	70	66	8	7	22	27
1977	64	57	11	11	25	32
1978	53	67	13	10	34	23
1979	51	68	7	4	42	28
1980	65	68	4	1	31	31
1981	62	71	6	2	32	27
1982	65	64	5	4	30	32
1983	71	73	4	1	25	26
1984	63	79	4	1	33	20
1985	58	42	4	4	38	54
1986	69	74	2	1	29	25
1987	67	80	3	1	30	19
1988	58	45	1	1	41	54
1989	60	44	2	3	37	53
1990	75	81	5	3	20	16

184. As in previous years the main focus of the Office's examination of mergers has been on competition, and any detrimental effect which might arise as a result of a merger. As table 4 indicates, there appears to have been a sharp increase in 1990 in merger cases under examination where the largest and second largest activities of the companies overlap - a "horizontal" merger.

"Vertical" mergers are those where the largest and second largest activities are at different stages in the production or distribution of the same product. Mergers which are not horizontal or vertical are classified as "diversifying". Since 1970 the broad pattern of distribution of mergers between these categories has not changed a great deal. However, in 1990 the proportion of horizontal mergers rose sharply both by number and by value to historically high figures. This may reflect a change in the pattern of corporate activity. "Trade sales" seem to be occurring to a greater extent than in past years, particularly as the fashion grows for companies to concentrate on their "core" businesses and dispose of activities that do not fit in with their current strategy. This may have resulted in disposals of businesses which might have been added previously when the accent was more on diversifying and securing a spread of businesses than appears to be the case now. When a trade sale takes place, the best price is often obtained from someone already in the industry, such as a competitor, which is why these disposals may attract the attention of the competition authorities.

(ii) Description of significant cases

185. During 1990, 27 references were made by the Secretary of State to the MMC, of which 23 were in accordance with the advice of the Director General. The great majority of references were based on competition concerns. However, on 26 July 1990, the Secretary of State announced that he would pay particularly close attention to the degree of State control, if any, of the acquiring company. This was a factor in five of the references. Another feature was that there were five references of mergers in the bus industry. Bus services were deregulated in 1986, and this has led to a number of mergers among operating companies which raise competition issues. The MMC have now reported on the merger situations regarding razors and razor blades, and also on the monopoly situation, involving Swedish Match NV and assets of Stora Kopparbergs Bergslags AB and the Gillette company. The report is currently under consideration by the Secretary of State. Other competition authorities, under their respective legislation, have also been involved in examination of these merger situations.

186. This is the largest number of references made to the MMC in any year and is almost twice the number made in the previous year (14). However, if account is taken of the factors concerning State ownership and bus mergers then the increase in references is only slightly above that in the previous year.

(iii) Divestment instead of reference

187. During 1990 use was made of new powers brought in by the Companies Act 1989 in order to satisfy competition concerns arising from a merger without the need for a reference to the MMC or, more colloquially, to "fix it first". In July 1990, the Rank Organization made a bid for one of its main competitors in the leisure industry, Mecca. Overlaps in activity were identified in several fields but were most significant in licensed gaming clubs offering the nationally popular random numbers game "Bingo" (played by 110 million people in 1989). The Director General identified adverse effects arising from increased concentration in Greater London where, as a result of the merger, the parties would account for almost 50 per cent of all

licensed bingo clubs and well over half the attendances. In this area the "travel to bingo distance" is relatively short and as a result consumers' choice would be appreciably reduced by the merger.

188. After discussion with the Office, Rank agreed to give undertakings to dispose of 10 of Mecca's 12 bingo clubs in Greater London. The Secretary of State accepted these undertakings on the advice of the Director General in lieu of a reference to the MMC.

189. In September 1990, Hillsdown Holdings announced an agreed bid for Strong & Fisher including the latter's 27.4 per cent holding in a competitor Pittard Garner. On 6 November, the Secretary of State for Trade and Industry announced that he intended to refer this bid to the MMC unless Hillsdown Holdings offered undertakings to remedy the expected adverse effects. These were considered to arise in the market for salted skins and pickled pelts (products in the animal hide market) and arose as a consequence of Strong & Fisher's 27.4 per cent holding in Pittard Garner. In the event, on advice from the Director General of Fair Trading, the Secretary of State accepted an undertaking from Hillsdown Holdings to reduce its holding in Pittard Garner to below 10 per cent within 18 months of acquiring Strong & Fisher. This reduction was in fact achieved on 21 December 1990.

(iv) Reports by the MMC

190. The Secretary of State received and published 17 reports by the MMC during the year (excluding newspaper mergers). All the mergers reports are listed in Part III B (iii) below. In a number of these cases the MMC found that the mergers might be expected to operate against the public interest. As a result remedies to the adverse effects arising were sought by the Office on behalf of the Secretary of State. Some of the more significant negotiations on remedy were on the following cases.

Michelin Tyre plc/National Tyre Service plc

191. The MMC concluded that this merger (referred in the previous year) would reduce competition in the distribution of replacement truck tyres. Following this the Secretary of State asked the Director General to monitor the sale of National Tyre Service, which Michelin had already announced, to Uniroyal Englebert Tyres, a United Kingdom subsidiary of Continental AG.

Kingfisher plc/Dixons plc

192. This merger would have brought together the United Kingdom's two largest chains of electrical retailers with a combined market share of between 21 and 26 per cent. The MMC noted that Kingfisher, through its Comet subsidiary, competed strongly on price and that terms in local markets were decisively influenced by national competition between the two companies. As a result the Secretary accepted undertakings that the merger would not proceed.

Grand Metropolitan ("Grand Met")/Elders IXL

193. This entailed Elders IXL, through its United Kingdom subsidiary Courage Holdings Ltd., acquiring Grant Met's breweries and brands; Grant Met acquiring 50 per cent of the company, Inntrepeneur Estates Ltd ("IEL"), operating the Courage pub estate; and IEL acquiring 3,565 of Grand Met's tenanted pubs. The transaction included two 10-year beer supply agreements to be entered into between Courage and IEL and Courage and Grant Met. The MMC concluded that the mergers would operate against the public interest in that competition in the supply of beer at the wholesale level would be reduced, leading to higher prices, and local concentration at the retail level would be increased. The MMC recommended that the mergers should not go ahead unless satisfactory undertakings were obtained. The Secretary of State has asked the Office to obtain appropriate undertakings to remedy the adverse effects identified by the MMC.

Stagecoach/Portsmouth Citybus

194. In its report on this completed merger, the MMC found that in the longer term there might be reduced competition in commercial bus services, deterrence of new entry and the likelihood of higher fares and lower quantity of service. The MMC recommended restrictions on Stagecoach's ability to use fares and service frequency as a predatory weapon against potential competitors. However, the Secretary of State was not persuaded that these remedies were sufficient, and the Director General was asked to explore the possibility of divestment of part of the merged business. As a result of negotiations between the Office and Stagecoach, a significant part of the Portsmouth area bus operations has been sold to Transit Holdings plc - a company not operating in the area.

(v) Interaction with the EC Merger Regulation

195. In the last quarter of 1990, the EC Merger Regulation came into force. The Office has therefore some, if brief, experience in liaising with the European Commission in the handling of mergers falling under this regulation (12 were notified by the end of 1990).

196. It is the practice of the United Kingdom authorities to take the provisions in the Regulation relating to close and constant liaison very seriously and to examine every merger notified to the European Commission. First, the Office looks to see whether the merger may cause a competition problem within the United Kingdom. Advice is then given to the Commission on the case in the light of specialist knowledge of the United Kingdom market or to process an application quickly under national laws if, at the end of the first month, the Commission finds it does fall within the provisions of the European Regulation. Secondly, the Office examines whether there is any distinct market problem in the United Kingdom or whether there are legitimate national non-competition interests which need to be protected. Finally, the Office looks at the merger from a European perspective within the terms of the European Community Regulation so that DGIV officials can be advised of any likely effects on competition elsewhere in the Community. This is done on every merger and the aim is to do so within the 10 days allowed by the regulation.

(vi) Regulation of Water (The Water Act 1989)

197. The 1989 Water Act established a regulatory framework for the privatized water industry. Licences were granted to supply water or water and sewerage services to England and Wales. Each undertaking has a natural monopoly in the area it covers. The regulatory body is the Office of Water Services presided over by the Director General ("the DG"). His duties under the Act include "to protect the interest of consumers ..." and to "promote economy and efficiency on the part of undertakers and facilitate effective competition between undertakers and those seeking appointments as undertakers". The supply of water and sewerage services are subject to a system of price control with annual price increases being limited to RPI + K, i.e., the increase in the retail price index plus a factor K to take account of the costs of new and replacement infrastructure. It is the task of the DG to review K factors in the light of the water comapnies' performance and of changed circumstances. These reviews of K are based on the assumption that there is a sufficient number of independently managed companies to enable the DG to make comparisons of efficiency and other criteria between companies and thereafter set Ks that create incentives for the companies to produce "competitive" outputs at "competitive" prices.

198. In the two years since the start of the new regulatory regime this principle of "sufficient comparators" has been tested, upheld and quantified by the Mergers and Monopolies Commission (MMC), principally in the report on the Three Valleys merger. The MMC ruled that unless the cost savings arising from the merger were made available to consumers as lower water charges, the purpose of the merger would not be sufficiently in the public interest to outweigh the disadvantage to the DG in carrying out his regulatory duties, given that the number of comparators he had available would be reduced by the merger. The Secretary of State decided that the merger should be allowed on condition that the £60 million expected from the merger were taken into account in future K setting. It was expected that at the end of a 10-year period the average user could enjoy charges of at least 6 per cent lower than if the merger had not taken place.

III. New studies relevant to competition policy

A. OFT Reports (available from the Office of Fair Trading)

(i) Competition Act Reports - section II A (iii)

Kingston-upon-Hull City Transport Ltd: local bus services in Kingston-upon-Hull (January 1990)

Oracle Teletext Limited: advertising services on teletext (February 1990)

(ii) Financial Services Act Reports - section II A (v)

Regulatory costs and the availability of independent financial advice: the rules of FIMBRA and other regulatory bodies (April 1990)

Disclosure of information about life insurance products and commission paid to independent financial advisers: the new requirements of the Securities and Investments Board (April 1990)

Trade publication and price transparency on the International Stock Exchange (April 1990)

International Stock Exchange: dissemination of company news (June 1990)

(iii) Competition Policy Reports

An outline of United Kingdom competition policy (April 1990)

Changes in the price of petrol in the United Kingdom following the invasion of Kuwait (September 1990)

Restrictive trade practices: provisions of the Restrictive Trade Practices Act 1976: a guide for members of the business community and their professional advisers (December 1990)

B. MMC Reports (available from Her Majesty's Stationery Office)

(i) Monopolies - section II A (iv)

The supply of petrol (February 1990), Cm 972 (ISBN 0 10 109722 0)

Electrical contracting at exhibition halls in London (April 1990), Cm 995 (ISBN 0 10 109952 5)

The supply of cinema advertising services (May 1990), Cm 1080 (ISBN 0 10 110802 8)

The supply of plasterboard (October 1990), Cm 1224 (ISBN 0 10 112242 x)

(ii) Competition Act 1980 - section II A (iii)

Highland Scottish Omnibus Ltd (July 1990), Cm 1129 (ISBN 0 10 111292 0)

(iii) Mergers

Atlas Copco AB and Desoutter Brothers (Holdings) plc (January 1990), Cm 959 (ISBN 0 10 109592 9)

Michelin Tyre plc and National Tyre Services Ltd (March 1990), Cm 986 (ISBN 0 10 109862 6)

The British United Provident Association Ltd and HCA United Kingdom Ltd (March 1990), Cm 996 (ISBN 0 10 109962 2)

British Steel plc and C Walker & Sons (Holdings) Ltd (April 1990), Cm 1028 (ISBN 0 10 110282 8)

The Lee Valley Water Company, The Colne Valley Water Company and Rickmansworth Water Company (April 1990), Cm 1029 (ISBN 0 10 110292 5)

Tiphook plc and Trailerent plc (May 1990), Cm 1060 (ISBN 0 10 110602 5)

Kingfisher plc and Dixons Group plc (May 1990), Cm 1079 (ISBN 0 10 110792 7)

Mr. David Sullivan and The Bristol Evening Post plc (May 1990), Cm 1083 (ISBN 0 10 110832 x)

General Utilities plc and The Mid Kent Water Company (July 1990), Cm 1125 (ISBN 0 10 111252 1)

Southern Water plc and Mid Sussex Water Company (July 1990), Cm 1126 (ISBN 0 10 111262 9)

Stagecoach (Holdings) Ltd and Portsmouth Citybus Ltd (July 1990), Cm 1130 (ISBN 0 10 111302 1)

Ransomes plc, Westwood Engineering Ltd and Laser Lawnmowers Ltd (July 1990), Cm 1128 (ISBN 0 10 111282 3)

BICC plc and Sterling Greengate Cable Company Ltd (July 1990), Cm 1131 (ISBN 0 10 111312 9)

Ransomes plc and Cushman Inc, Brouwer Equipment Inc and Brouwer Turf Equipment Ltd (July 1990), Cm 1132 (ISBN 0 10 111322 6)

British Airways plc and Sabena SA (July 1990), Cm 1155 (ISBN 0 10 111552 0)

South Yorkshire Transport Ltd acquisitions (August 1990), Cm 1166 (ISBN 0 10 111662 4)

William Cook plc acquisitions (August 1990), Cm 1166 (ISBN 0 10 111962 3)

Western Travel Ltd and G & G Coaches (Leamington) Ltd (October 1990), Cm 1226 (ISBN 0 10 112262 4)

Elders IXL Ltd and Grand Metropolitan plc (October 1990), Cm 1227 (ISBN 0 10 112272 1)

Trelleborg AB & McKechnie Extruded Products Ltd (December 1990), Cm 1384 (ISBN 0 10 113842 3)

Stagecoach (Holdings) Ltd and Formia Ltd (December 1990), Cm 1382 (ISBN 0 10 113822 9)

C. Other published work on competition policy

(NB The following is a selection and not a comprehensive bibliography)

(i) Books

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Gardner, N. A Guide to United Kingdom & European Community Competition Policy. London, Macmillan, 1990)

Gowland, D. The Regulation of Financial Markets in the 1990s. London, Gower, 1990.

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(ii) Articles

Brittan, Sir Leon. The Law and Policy of Merger Control in the EEC. European Law Review, October 1990, pp. 351-357.

Caves, R.E. Lessons from Privatization in Britain: State Enterprize Behaviour, Public Choice and Corporate Governance. Journal of Economic Behaviour and Organization 13, 2 March 1990, pp. 145-170.

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199. The Government supplied the UNCTAD secretariat with the following information on its legislation:

Doc. A:

Decision 283 - Rules to prevent or correct distortions in competition resulting from practices of dumping or subsidies;

Decision 284 - Rules to prevent or correct distortions in competition resulting from restrictions on exports;

Decision 285 - Rules to prevent or correct distortions in competition resulting from practices restricting free competition.

Doc. B:

Decree of the Congress of the Republic of Venezuela: Consumer Protection Act;

Doc. C:

National Congress: Industrial Property Act;

Doc. D:

Decision 65 on industrial property - Cartagena Agreement Commission;

Doc. E:

Explanatory introduction and draft of the "Act to Guarantee free competition";

Doc. F:

Resolution 296. Request by the Government of Ecuador for application of the corrective measures provided in decision 230 to imports into Venezuela of sorbitol originating in France;

Doc. G:

Export restrictions in force in the member countries;

Doc. H:

Legislation on trade law in the member countries of the Cartagena Agreement - Study of Comparative Law.
Trade law in the Andean Group.

Notes

1/ Federal Cartel Office, Press Release No. 1/90, 3 May 1990.

2/ Federal Cartel Office, Press Release No. 2/90, 21 May 1990.

3/ Federal Cartel Office, Press Release.

4/ Federal Cartel Office, Press Release No. 6/90, 22 October 1990.

5/ Federal Cartel Office, Press Release No. 7/90, 1 November 1990.